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STATE OF MICHIGAN
IN THE SUPREME COURT

In re ESTATE OF JEROME E. SIZICK.
_____

JULIE K. GRIES, Personal Representative of the ESTATE OF JEROME E. SIZICK,

Petitioner-Appellant,

v

MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Respondent-Appellee.
_____/

Supreme Court No. 166921

Court of Appeals No. 364321

Saginaw County Probate Court
No. 21-141789-PO

DEPARTMENT OF HEALTH AND HUMAN SERVICES' SUPPLEMENTAL BRIEF

ORAL ARGUMENT NOT REQUESTED

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STATEMENT OF QUESTION PRESENTED

1. An issue becomes moot upon an event that renders it impossible for a court to grant relief or if a judgment cannot have a practical legal effect on the existing controversy. After the Michigan Court of Appeals vacated the probate court's spousal support protective order that is the basis for this application for leave to appeal, Jerome E. Sizick died, leaving no mechanism for his wife to obtain a spousal support order or otherwise seek redress in any state court. Did Jerome's death render this appeal moot?

Petitioner-Appellant's answer:	Did not answer.
Respondent-Appellee's answer:	Yes.
Trial court's answer:	Did not answer.
Court of Appeals' answer:	Did not answer.

Controlling authority: MCL 700.5401(3)*; Barrow v City of Detroit Election Comm*, 305 Mich App 649, 659 (2014).

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CONSTITUTIONAL PROVISIONS, STATUTES, RULES INVOLVED

MCL 700.5401 – Protective proceedings

(1) Upon petition and after notice and hearing in accordance with this part, the court may appoint a conservator or make another protective order for cause as provided in this section.

***

(3) The court may appoint a conservator or make another protective order in relation to an individual's estate and affairs if the court determines both of the following:

> (a) The individual is unable to manage property and business affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance.
>
> (b) The individual has property that will be wasted or dissipated unless proper management is provided, or money is needed for the individual's support, care, and welfare or for those entitled to the individual's support and that protection is necessary to obtain or provide money.

(4) The court may appoint a conservator in relation to the estate and affairs of an individual who is mentally competent, but due to age or physical infirmity is unable to manage his or her property and affairs effectively and who, recognizing this disability, requests a conservator's appointment.

MCL 700.1106(y) – Definitions; M to P.

As used in this act:

***

(y) "Protected individual" means a minor or other individual for whom a conservator has been appointed or other protective order has been made as provided in part 4 of article V.

MCL 700.1102 – Applicability of definitions.

The definitions contained in this part apply throughout this act unless the context requires otherwise or unless a term defined elsewhere in this act is applicable to a specific article, part, or section.

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INTRODUCTION

This Court has posed a single question to the parties: does Jerome Sizick's death render this appeal moot?[1] Due to the complex procedural posture of this case, this answer is yes, but it involves a nuanced analysis. Whether this appeal is moot is inextricably intertwined with how the Court decides the application for leave to appeal, which remains pending.

The Michigan Department of Health and Human Services (the Department) maintains that the application should be denied. If this Court denies the application or grants the application and affirms the decision of the Michigan Court of Appeals, the appeal is rendered moot on remand to the probate court. This is because Jerome Sizick has now passed, and his surviving spouse, Janet Sizick, cannot obtain a spousal support order under MCL 700.5401(3). The Estate[2] would have no mechanism to seek redress in any state court. Even on remand, there is nothing that the probate court can do.

Alternatively, if this Court grants the application and reverses the decision of the Michigan Court of Appeals, the Estate would be left with two spousal support

---

[1] In its order for supplemental briefing, this Court asked whether the "appeal" is moot and stated that the application remains pending. (9/13/2024 Order at 1.) The Department interprets the Court's use of the term "appeal" to include not only a decision on the application, but also any implications on the lower court proceedings on remand—all of which have practical legal effects on whether there is an existing controversy. The Department acknowledges that this Court's decision on the application is not immediately moot based on Jerome's death, but rather, it is the subsequent proceedings in the appeal on remand to the probate court that ultimately render this appeal moot.

[2] The Department hereinafter refers to Jerome's personal representative and surviving spouse, Janet, as "the Estate" for ease of reference.

orders. However, as the Department pointed out in its answer, the two orders are insufficient to determine the amount of assets transferred to Jerome's spouse, Janet. Thus, against the extensive backdrop of this case, the ultimate relief sought—a determination that Jerome is eligible for Medicaid—is still entirely speculative. Even if this Court were to continue down the winding road towards the slight prospect of relief, the Estate still fails to demonstrate a live controversy.[3]

[3] The Department acknowledges that this argument is not directly related to Jerome Sizick's death and the scope of the Court's order for supplemental briefing. However, the issue was raised in the Department's answer to the application, and the Department would be remiss to not reiterate its point in the instant brief in the context of whether it renders the appeal moot.

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STATEMENT OF FACTS AND PROCEEDINGS

For the sake of brevity, only a quick recap of the previously outlined facts is necessary. On January 18, 2024, the Michigan Court of Appeals issued its second decision, *Sizick II,* in this case. *In re Estate of Sizick,* unpublished per curiam, opinion of the Michigan Court of Appeals issued on May 26, 2022 (*Sizick I*) (App'x 2 at 020-026); *In re Est of Sizick,* unpublished per curiam opinion of the Michigan Court of Appeals issued January 18, 2024 (*Sizick II*); (App'x 1 at 010-016). *Sizick II* affirmed *Sizick I* relating to MCL 700.5401(3)(a), and again held that the probate court abused its discretion by applying the wrong legal framework to MCL 700.5401(3)(b) in issuing a spousal support order and a nunc pro tunc order dating back to 2021. (*Sizick II*, App'x 1 at 010-016.) The *Sizick II* court vacated those portions of the probate court's orders and remanded the case for further proceedings. (*Sizick II,* App'x 1 at 019.)

An application for leave to appeal to the Michigan Supreme Court does not by itself stay the decision of the Michigan Court of Appeals or the probate court. However, MCR 7.215(F)(1)(a) prevents the Michigan Court of Appeals' judgment from becoming effective pending the disposition of the instant application.[4] Thus, the Michigan Court of Appeals' decision and judgment vacating and remanding for further proceedings would not become effective until the instant application is decided. *See id.*

[4] In this case, a stay was not separately entered by the Michigan Court of Appeals pursuant to MCR 7.209(E)(4).

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On April 10, 2024, Jerome Sizick filed his application for leave to appeal in this Court. (Appellant's App.) On May 8, 2024, the Department filed its answer. (Appellee's Ans.) On May 29, 2024, counsel for Sizick filed a motion for substitution, informing the Court that Jerome Sizick died on April 21, 2024, and seeking to substitute Julie Gries, personal representative of Jerome's estate, as the appellant in this matter. (Mot at 2-3.) On June 5, 2024, this Court granted the motion. (6/5/2024 Order at 1.)

On September 13, 2024, this Court directed the parties to provide supplemental briefing on the issue of whether the appeal has been rendered moot as a result of Jerome Sizick's death. (9/13/2024 Order at 1.) The Estate's application for leave to appeal remains pending. (*Id.*)

STANDARD OF REVIEW

As outlined in the Department's answer to the application, a probate court's factual findings are reviewed for clear error and its "dispositional rulings, including a decision to enter a protective order, are reviewed for an abuse of discretion." *In re Est of Vansach,* 324 Mich App 371, 385 (2018). Questions of statutory interpretation are reviewed de novo. *In re Guardianship of Redd*, 321 Mich App 398, 404 (2017).

"An issue is moot if an event has occurred that renders it impossible for the court to grant relief. An issue is also moot when a judgment, if entered, cannot for any reason have a practical legal effect on the existing controversy." *Barrow v City of Detroit Election Comm*, 305 Mich App 649, 659 (2014) (quotation marks and

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citation omitted); see also *League of Women Voters of Mich v Secretary of State*, 506 Mich 561, 580 (2020) (quotation marks and citation omitted), quoting *Anway v Grand Rapids R Co*, 211 Mich 592, 610 (1920).

ARGUMENT

I. Not only does Jerome's death render this appeal moot upon remand to the probate court, but the ultimate relief sought by the Estate is so speculative that a live controversy no longer exists.

The Michigan Court of Appeals has twice remanded this case to the probate court to correct the lower court's repetitive error in applying MCL 700.5401(3)(b). The death of Jerome Sizick during the pendency of his application for leave to appeal in this Court raises the question of whether his death renders the appeal moot. The answer is yes, but the rationale turns on how this Court decides the application.

As outlined in the Department's answer to the application, leave to appeal should be denied because the probate court abused its discretion in granting the motion for protective order for spousal support and the Michigan Court of Appeals did not clearly err in reversing that decision.

On the issue of mootness, if this Court denies the application or grants the application but affirms the Michigan Court of Appeals' decision—vacating the probate court's spousal support orders and remanding to the probate court—the appeal is moot on remand because the probate court cannot issue a spousal support order to Jerome after his death. Now that Jerome has passed, under the plain language of MCL 700.5401(3)(b), he is no longer an individual who requires

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protection, and his surviving spouse, Janet, cannot obtain a spousal support order based on the assets of Jerome's estate. See MCL 700.5401(3) (applies only to an "individual" needing protection, not a deceased person); *Detroit v Redford Twp*, 253 Mich 453, 456 (1931) ("Express mention in a statute of one thing implies the exclusion of other similar things.").

On the other hand, if this Court grants the application for leave to appeal and reverses the Michigan Court of Appeals' decision, the previously issued spousal support orders would be deemed valid. However, even if the spousal support orders were valid, the orders as issued by the probate court do not *guarantee* that Jerome would be eligible for Medicaid, which is the goal of the Estate through this appeal. The Department maintains that this is not a Medicaid case, but even if the spousal support orders are valid, they are insufficient to establish the amount of assets transferred to Janet. As a consequence, the ultimate relief sought by the Estate—a determination that Jerome was eligible for Medicaid—is entirely speculative. As a result, there is no live controversy, and the appeal is moot.

A. The appeal is moot if this Court denies the application *or* grants the application and affirms the decision of the Michigan Court of Appeals because, now that Jerome has passed, the Estate can no longer obtain a spousal support order.

If the application for leave to appeal is denied, or alternatively, the application is granted and the Michigan Court of Appeals' decision is ultimately affirmed by this Court, the spousal support orders that were previously entered

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while Jerome was alive would be vacated and the proceedings would be remanded to the probate court.

An issue is deemed moot when an event occurs that renders it impossible for a reviewing court to grant relief. See *Barrow,* 305 Mich App at 659; *League of Women Voters*, 506 Mich at 580. Here, upon remand to the probate court, the appeal becomes moot. This is because even applying the proper standard under MCL 700.5401(3)(b), the probate court cannot issue a spousal support order for a deceased person or the estate's assets.

Under MCL 700.5401(3), a court may determine that financial support is necessary for a spouse from an individual that "is unable to manage property and business affairs" and "has property that will be wasted." This inquiry requires not only consideration of the requesting spouse's needs and resources, but the *individual's* needs and circumstances as well. See MCL 700.5408; *Vansach*, 324 Mich App at 395–396. Accordingly, spousal support orders are designed for individuals that need protection while they are alive. Under MCL 700.5401(3), the probate court is required to make a distinct finding as to whether the individual is unable to manage property because of a variety of listed conditions/afflictions. Such a determination cannot logically be made as to a deceased person. Thus, since Jerome's death, he is no longer an "individual" needing protection under the plain language of MCL 700.5401(3).

Provisions of a statute must be read in the context of the entire statute to produce a harmonious and consistent whole. *Weems v Chrysler Corp,* 448 Mich 679,

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699–700 (1995). Further, the omission of a provision in one part of a statute, which is included elsewhere in the statute, should be construed as intentional. *Farrington v Total Petroleum, Inc,* 442 Mich 201, 210 (1993); *Detroit*, 253 Mich at 456 ("Express mention in a statute of one thing implies the exclusion of other similar things."); *Donajkowski v Alpena Power Co*, 460 Mich 243, 261 (1999) ("Michigan courts determine the Legislature's intent from its *words*, not from its silence."). A court's role in construing statutory language is to discern the Legislature's intent, which may reasonably be inferred from the statute's words. *Sanford v Michigan*, 506 Mich 10, 14-15 (2020). This Court's analysis must focus on the express language of the statute because it offers the most reliable evidence of legislative intent. *Id.* at 15. "When the statutory language is clear and unambiguous, judicial construction is limited to enforcement of the statute as written." *Id.*

Further, a "[p]rotected individual" is specifically defined in the Estates and Protective Individuals Code (EPIC) as "a minor or other individual for whom a conservator has been appointed or other protective order has been made as provided in part 4 of article V." MCL 700.1106(y); MCL 700.1102 (applicability of EPIC definitions to the entire Act). Had the Legislature intended a deceased person, like Jerome, to be included as a protected individual, it certainly could have expressly set forth its intent, as it did elsewhere in the statute. See c.f. MCL 700.3101 *et seq* (Article III, Probate of Wills and Administration); MCL 700.1104(b) (elsewhere in EPIC defining estate as "property of the decedent, trust or other person whose affairs are subject to this act as the property is originally constituted and as it

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exists throughout administration"). But it did not, and instead, explicitly used the term protected individual.

Here, without more, EPIC's limitation that a spousal support order may be issued only as to an individual and not as a deceased person or an estate, is clearly an exclusive or exhaustive list. There is no basis for applying this statute to Jerome now that he has passed. The Estate is bound by—and in this case limited by— the statute's plain meaning.

This analysis makes even more sense when one considers the implications regarding the analysis required under MCL 700.5401(3)(b). Not only is a spousal support order unavailable for a deceased person, but the relevant inquiry under MCL 700.5401(3)(b) is impossible upon Jerome's death. In its most recent decision, the Michigan Court of Appeals explicitly instructed the probate court to use *current* information about the value of Jerome's assets and Jerome's interest in those assets in considering whether a spousal support order should be issued. See *Sizick II*; (App'x 1 at 010-016.) But because Jerome is now deceased, there is no such information regarding his assets. Rather, all that exists is Jerome's *estate*; he does not have any current assets, and the estate must be administered by the personal representative, not through his surviving spouse in a spousal support order. (Mot Sub, Register's Statement); See MCL 700.5431 ("Upon termination [of a conservatorship], title to the estate property passes to the formerly protected individual or to successors subject to the provision in the order for expenses of administration and to directions for the conservator to execute appropriate

instruments to evidence the transfer."). This renders any analysis under MCL 700.5401(3)(b) entirely unworkable.

Said another way, Jerome has no assets; his assets have now passed to the estate to be administered by his personal representative. Requiring such an inquiry would require delving into the estate administration post-death, which is not the aim of MCL 700.5401(3)(b)—particularly when MCL 700.5401(3)(b), does not provide for such circumstances and there are separate statutes dedicated to estate administration and estate recovery. To find otherwise would make a spousal support order much less a matter of transferring assets and instead convert the inquiry into guesswork as to future estate administration.

Here, there is no meaningful relief that any court can provide because even if this case is remanded to the probate court, a spousal support order can no longer be considered, let alone issued. See *Barrow,* 305 Mich App at 659; *League of Women Voters*, 506 Mich at 580. Thus, the relief sought is impossible. See *id.*

Moreover, there is no issue of public significance warranting consideration of the moot issue. See *Contesti v Attorney General,* 164 Mich App 271, 278 (1987) (citations omitted) (courts will entertain moot cases if the issues are of public significant and likely to recur in the future yet evade judicial review). Resolution of this case on the merits is not necessary for guidance in future cases, where future cases of the same type are exceedingly rare. And the Michigan Court of Appeals has twice reversed the probate court's decision, outlining the repeated error and conclusively resolving the issue.

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B. Even if this Court grants the application and reverses the Michigan Court of Appeals' decision, the ultimate relief sought by the Estate is entirely speculative.

The next question is whether the appeal is also moot if this Court reverses the Michigan Court of Appeals' decision and upholds the probate court's orders. The answer is also yes—not necessarily because of Jerome's death but based on the speculative relief sought by the Estate as to a Medicaid eligibility determination. A favorable decision from this Court would have no effect in the real world. Even if this Court grants the relief sought, there is no guaranteed relief for the Estate.

Despite the Estate's repeated attempts to conflate the issue of the validity of the spousal support order and a Medicaid eligibility determination, the Department remains steadfast that this is not a Medicaid case. No Medicaid decision is at issue here. However, it should not be lost in this conflation that the Estate *first* needs a valid spousal support order before there is even *potential* to obtain the relief ultimately sought, a Medicaid eligibility determination. And it is clear from the exhaustive briefing that the ultimate goal is a valid spousal support order in hopes that it would entitle Jerome to Medicaid benefits.

But as the Department pointed out in its answer, even if the existing spousal support orders are upheld by this Court, the orders did not provide sufficient information regarding the amount of assets transferred to Janet. To put this another way, even if the Estate obtains all the relief it seeks in its application for leave to appeal, at *most* all that the Estate can offer is the remote *possibility* of speculative relief in the future based on an entirely separate determination of Medicaid eligibility. But a live controversy is not demonstrated by speculative

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concerns that *may* arise from one party's *possible* relief available at some point in the future. See *League of Women Voters,* 506 Mich at 584. Even assuming for the sake of argument that the claim of error regarding the Michigan Court of Appeals is meritorious, that issue presents nothing but abstract questions of law and fact that are entirely separate from the parties' existing legal rights pertaining to the validity of the probate court's spousal support orders.

Thus, while the Department maintains the application for leave to appeal should be denied, even if this Court grants the application and reverses the Michigan Court of Appeals decision, the Estate is in no better position and are left with only a *prospective* and *speculative* claim for relief on Jerome's Medicaid application. The possibility of success is simply a far too attenuated chain of events to warrant relief here. Thus, this appeal is effectively moot, and this Court should decline to consider it further.

For the reasons stated above, there is again no issue of public significance presented warranting consideration of the moot issue. See *Contesti,* 164 Mich App at 278.

* * *

Even if this Court decides that the appeal is not moot, the issues raised above still support denial of the application for leave to appeal, as none of the grounds in MCR 7.305(B) are met. (See Appellee's Ans. at 2, 12-21.)

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CONCLUSION AND RELIEF REQUESTED

As outlined in the answer to the application for leave to appeal, the Department respectfully requests that this Court deny the Estate's application for leave to appeal, or alternatively, uphold the opinion of the Court of Appeals in *Sizick II*. Further, on remand to the probate court, the death of Jerome Sizick renders the appeal moot. And even if this Court grants the application and reverses the Michigan Court of Appeals' decision, the appeal is still moot based on the speculative relief sought.

Respectfully submitted,

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WORD COUNT STATEMENT

The Court did not specify a word limit in its order directing supplemental briefing. This **supplemental brief** contains 3192 words, which is within the 3200-word limit afforded to replies. See MCR 7.305.

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